

ORIGINAL

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

BL MAY 27 2004

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL Docket No. 1446

This Document Relates To:

Civil Action No. H-01-3624
(Consolidated)

MARK NEWBY, *et al.*, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., *et al.*,

Defendants.

CONSECO ANNUITY ASSURANCE
COMPANY, Individually and on Behalf
of All Others Similarly Situated,

H-03-CV-2240

Plaintiff,

v.

CITIGROUP, INC., CITIBANK, N.A.,
CITICORP, SALOMON SMITH
BARNEY, SALOMON BROTHERS
INTERNATIONAL LIMITED, *et al.*,

Defendants.

CONSECO ANNUITY ASSURANCE COMPANY'S PARTIAL OPPOSITION
TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S MOTION
FOR LEAVE TO GIVE NOTICE TO CERTAIN CLASS MEMBERS
PURSUANT TO RULE 23(d)(2) OF THE FEDERAL RULES OF CIVIL
PROCEDURE AND CROSS MOTION FOR LEAVE TO GIVE NOTICE TO
PURCHASERS OF YOSEMITE II, STERLING, AND EURO CITIGROUP CLNs

2173

Conseco Annuity Assurance Company ("Conseco"), by its counsel, respectfully submits this Partial Opposition To The Regents Of The University Of California's Motion For Leave To Give Notice To Certain Class Members Pursuant To Rule 23(d)(2) Of The Federal Rules Of Civil Procedure ("The Regents' Motion For Leave To Give Notice") And Cross Motion For Leave To Give Notice To Purchasers Of Citigroup Yosemite II CLNs, Sterling CLNs, and Euro CLNs ("Conseco's Cross Motion").

INTRODUCTION

In recognition of the fact that The Regents Of The University Of California ("The Regents") does not have standing to pursue certain claims on behalf of purchasers of certain securities, The Regents has asked this Court to grant its Motion For Leave To Give Notice and has submitted therewith a proposed Notice Of Potential Dismissal Of Certain Claims ("The Regents' Proposed Notice"). This Court should deny The Regents' Motion For Leave To Give Notice because The Regents' Proposed Notice is materially misleading and would severely prejudice purchasers of the Yosemite I Citigroup CLNs. Accordingly, The Regents' Proposed Notice would not serve the purpose of Rule 23(d)(2) which permits a court to issue a notice only "for the protection of members of the class." Fed. R. Civ. Proc. 23(d)(2). Conseco, therefore, respectfully requests that this Court deny The Regents' Motion For Leave To Give Notice as to purchasers of Citigroup Credit Linked Notes ("Citigroup CLNs").¹

¹ The Citigroup Credit Linked Notes consist of the following securities: (a) Yosemite Securities Trust I 8.25% Series 1999-A Linked Enron Obligations maturing November 15, 2004, issued in the aggregate amount of \$750,000,000 on or about November 4, 1999; (b) Yosemite Securities Trust II 8.75% Series 2000 Linked Enron Obligations maturing February 2007, issued in the aggregate amount of £200,000,000 on or about February 23, 2000; (c) Credit Linked Notes Trust 8% Notes maturing August 15, 2005, issued in the aggregate amount of \$500,000,000 on or about August 25, 2000; (d) Credit Linked Notes Trust II 7 3/8 % Notes maturing May 15, 2006, issued in the aggregate amount of \$500,000,000 on or about May 24, 2001; (e) Sterling Credit Linked Notes Trust 7 1/4% Notes maturing May 24, 2006, issued in the aggregate amount of £125,000,000 on or about May 24, 2001; and (f) Euro Credit Linked Notes Trust 6 1/2% Notes maturing May 24, 2006, issued in the aggregate amount of 200,000,000 Euro on or about May 24, 2001. Because Conseco only purchased, and is prosecuting class claims on behalf of purchasers of Citigroup CLNs, Conseco does not take any position with respect to the portion of the Regents' Motion To Give Notice that pertains to Marlin Water Trust II/Marlin Water Capital Corp. II 6.19% Notes

Additionally, Consecos respectfully requests that this Court grant Consecos Cross Motion. Pursuant to Consecos proposed notice (“Consecos Proposed Notice”), annexed hereto as Exhibit A, Consecos seeks to provide accurate information regarding the status of the claims of Citigroup CLN purchasers. Consecos Proposed Notice alerts purchasers of Citigroup Yosemite II CLNs, Sterling CLNs, and Euro CLNs to the existence of the Consecos Action (H-03-CV-2240), Consecos timely class claims raised therein, and directs Yosemite II, Sterling, and Euro Citigroup CLNs purchasers to contact Consecos counsel if they have questions or are interested in serving as class representatives in H-03-CV-2240.

I. THE COURT SHOULD DENY THE REGENTS’ MOTION FOR LEAVE TO GIVE NOTICE BECAUSE THE REGENTS’ PROPOSED NOTICE IS MATERIALLY MISLEADING

By its terms, Rule 23(d)(2) grants this Court discretion to permit notice to be given “for the protection of members of the class or otherwise for the fair conduct of the action.” Fed. R. Civ. Proc. 23(d)(2). Because The Regents’ Proposed Notice is materially misleading and fails to inform purchasers of Citigroup CLNs of several critical facts, The Regents’ Proposed Notice would not “protect” members of the Citigroup CLN Class. This Court should therefore, deny The Regents’ Motion To Give Notice as to Citigroup CLN purchasers. The Regents’ Proposed Notice fails to inform purchasers of Citigroup CLNs that: i) based on this Courts prior rulings, the claims asserted on behalf of purchasers of \$ 750 million of Yosemite I Citigroup CLNs, in the Newby Action, are time barred (a fact which The Regents’ Proposed Notice both omits, as well as affirmatively misrepresents); ii) Consecos purchased three of the six Citigroup CLNs and therefore has standing to pursue Section 12(a)(2) of the Securities Act of 1933, 15 U.S.C. §

due 7/15/03 the Marlin Water Trust II/Marlin Water Capital Corp. II 6.31% Notes due 7/15/03; the Osprey Trust/Osprey I, Inc. 7.797% Notes due 1/15/0; or Osprey Trust/Osprey I, Inc. 6.375% Notes due 1/15/03. Those notes were not issued by Citigroup and are not Citigroup Credit Linked Notes.

771(a)(2), (“Section 12(a)(2)”) claims on behalf of purchasers of three of the six issues of Citigroup CLNs; and iii) Consecos has timely filed federal securities law claims on behalf of all Citigroup CLNs, including purchasers of Yosemite I Citigroup CLNs, and has been actively prosecuting these claims on their behalf for nearly two and a half years.² In light of the misleading nature of The Regents’ Proposed Notice, and the prejudice that any reliance upon such notice will visit upon purchasers of Yosemite I Citigroup CLNs, Consecos respectfully requests that this Court deny The Regents’ Motion For Leave To Give Notice as to Citigroup CLN purchasers.

A. The Regents’ Proposed Notice Is Materially Misleading Because Such Notice Does Not Inform Purchasers of \$ 750 Million Of Yosemite I Citigroup CLNs That Their Section 10 Claims Are Time Barred In The Newby Action, And Thus Cannot Be Pursued In The Newby Action

The Regents’ Proposed Notice ignores the fact that the Section 10(b) claims asserted on behalf of purchasers of Yosemite I Citigroup CLNs in the Newby Action are time barred. Instead of alerting purchasers of Citigroup CLNs, particularly purchasers of \$ 750 million of Yosemite I Citigroup CLNs, to this irreparable defect, The Regents’ Proposed Notice affirmatively misstates, “...The Regents may, on your behalf, pursue § 10(b) claims, which are fraud claims.” Proposed Notice at 2. That statement is simply false and directly contradicts previous ruling of this Court.

This Court has previously established that the one/three year statute of limitations/repose set forth in Lampf³ and 15 U.S.C. § 77m governs the claims asserted by The Regents against

² The following recently filed documents address these issue in detail: (i) Consecos Annuity Assurance Company’s Reply Memorandum In Further Support Of Consecos Annuity Assurance Company’s Re-Filed Motion For Appointment As Lead Plaintiff In H-03-CV-2240, filed May 12, 2004 (“Consecos Lead Plaintiff Reply”); (ii) Consecos Annuity Assurance Company’s Refined Motion For Appointment As Lead Plaintiff In H-03-CV-2240, filed April 1, 2004 (“Consecos Lead Plaintiff Motion”); and (iii) Consecos Annuity Assurance Company’s Memorandum Of Law In Opposition To The Newby Lead Plaintiff’s Amended Motion For Class Certification, filed October 16, 2003 (“Consecos’s Newby Class Certification Opposition”).

³ Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350 (1991) (“Lampf”).

Citigroup. See Order Re Citigroup's Motion To Dismiss dated April 1, 2004 ("April 1st Order") at 5. This Court has also held that, in determining whether The Regents timely filed claims against certain bank defendants, including Citigroup, the operative date is January 14, 2003 -- the date on which The Regents indicated its intention to amend the Consolidated Complaint so as to add certain bank subsidiaries. See id. Based on the three year statute of repose which this Court has held to be controlling, the latest date on which The Regents would have been able to assert federal securities law claims on behalf of purchasers of Yosemite I Citigroup CLNs was November 4, 2002 -- three years after the date of their issuance. The Regents, however, did not assert such claims until January 14, 2003, at the earliest. Therefore, based on the law of the case, the claims on behalf of purchasers of Citigroup CLNs issued prior to January 14, 2000 are time barred in the Newby Action.⁴ That critical fact is absent from The Regents' Proposed Notice. Should Yosemite I Citigroup CLN purchasers, in reliance on the material misrepresentation that The Regents "may, on (their) behalf, pursue § 10(b) claims", seek to intervene in the Newby Action, the claims of such purchasers will be dismissed and forever extinguished.⁵

⁴ Significantly, The Regents do not argue otherwise. The Regents never responded to the Defendant CIBC's argument that §§ 10(b), 11, and 15 claims against CIBC based on a 1999 offering were barred by the statute of repose. (See April 1st Order at 4) and this Court found those claims to be time-barred. Id. at 9. In light of this ruling, Lehman Brothers Holdings, Inc. ("LBHI") and Lehman Brothers, Inc. ("LBI") moved for reconsideration of this Court's decision on a prior motion to dismiss, stating that The Regents' claims against LBI concerning securities issued in May 1999 were likewise time-barred. See Lehman Brothers Holdings, Inc.'s and Lehman Brothers, Inc.'s Partially Unopposed Motion To Reconsider Order Regarding The Lehman Defendants' Motion To Dismiss, filed April 13, 2004. The Regents *did not oppose* dismissal of claims against LBI on those grounds. Id. at 3. (The motion is still pending).

⁵ Counsel for The Regents engaged in conduct of striking similarity in connection with the WorldCom Securities Litigation. After taking part in a letter-writing campaign pursuant to which counsel for The Regents misrepresented the viability of certain claims to potential plaintiffs, United States District Court Judge Denise Cote found that "the potential statute of limitations impediments to bringing certain of the more recently filed Individual Actions do not appear to have been described. This is a very serious problem for a litigant who chooses to opt out of the class, only to learn that the Individual Action that it had filed was barred by the statute of limitations and it had lost all right to recovery." In re WorldCom Sec. Litig., 2003 U.S. Dist. LEXIS 20748, *19 (S.D.N.Y. 2003) (emphasis added). Subsequent to such ruling, a curative notice was issued informing all investors that "class members who filed Individual Actions through Milberg Weiss may not have been informed adequately of the statute of limitations bars that might affect their claims." See Court Ordered Notice To All Investors Who Have Filed Individual WorldCom Actions, dated December 11, 2003. If The Regents is permitted to issue The Regents' Proposed Notice, then Citigroup CLN purchasers will be misled just as the WorldCom investors were misled.

Because The Regents' Proposed Notice misrepresents the viability of all federal securities law claims asserted on behalf of purchasers of \$ 750 million of Yosemite I Citigroup CLNs in the Newby Action, this Court should deny The Regents' Motion For Leave To Give Notice as to Citigroup CLN purchasers.⁶

B. The Regents' Proposed Notice Is Materially Misleading Because Such Notice Does Not Inform Purchasers of Yosemite I, CLN I and CLN II Citigroup CLNs That Consecro Is Already Pursuing Section 12(a)(2) Claims On Their Behalf In The Consecro Action

As extensively briefed in prior submissions, Consecro is the only entity before the Court, that purchased Citigroup CLNs - having purchased the Yosemite I, CLN I, and CLN II Citigroup CLNs from Citigroup between November 1999 and May 2001. Accordingly, Consecro unquestionably has standing to bring Section 12(a)(2) claims against Citigroup on its own behalf and on behalf of all purchasers of the Yosemite I, CLN I and CLN II Citigroup CLNs.

The Regents' Proposed Notice, however, misleads purchasers of Yosemite I, CLN I, and CLN II Citigroup CLNs into believing that "unless a class member to whom this notice is directed steps forward to serve as a class representative on the Section 12(a)(2) claims, those Section 12(a)(2) claims on behalf of a putative class may be dismissed." Proposed Notice at 2.

⁶ Not only is The Regents' Proposed Notice misleading, its issuance would also be futile. Even if The Regents identified a purchaser of Yosemite I Citigroup CLNs willing to intervene in the Newby Action as a result of its Proposed Notice, its intervention would not resuscitate the time-barred claims asserted by The Regents with respect to purchasers of \$ 750 million of Yosemite I Citigroup CLNs in the Newby Action. See In re: Greyhound Sec. Litig., 1997 WL 531317, *4 and *6 (N.D. Tex. Aug. 15, 1997) ("intervention is not an appropriate means for reviving a defunct action and ... intervention will not save the class claims in [the] complaint in intervention from a statute of limitations defense."). See also, Horn v. Eltra Corp., 686 F.2d 439, 442 n.2 (6th Cir. 1982) ("absent an independent basis for jurisdiction, a permissive intervenor may not breathe life into a 'non-existent' lawsuit"); Atkins v. State Bd. of Educ. of N. Carolina, 418 F.2d 874, 876 (4th Cir. 1969) ("ordinarily intervention cannot be used to revive a lawsuit"); Nagle v. Commercial Credit Bus. Loans, Inc., 102 F.R.D. 27 (E.D. Pa. 1983) (intervention not a proper way "to cure the jurisdictional and other defects" of a complaint); Washington v. Wyman, 54 F.R.D. 266, 272 (S.D.N.Y. 1971) (denying intervention where "the intervenors cannot possibly have a claim or defense in common with a plaintiff who never had a claim"); Interstate Commerce Comm'n v. S. Ry. Co., 380 F. Supp. 386, 395 (M.D. Ga. 1974) ("Given the presence of a fatal defect in the...complaint, it is...plain that the complaint must be dismissed, and from this it follows that there remains no action in which [the would-be intervenors] may intervene."), aff'd in relevant part, 543 F.2d 534 (5th Cir. 1976).

This is simply not true because Conseco has standing to assert Section 12(a)(2) claims on behalf of purchasers of three of the six Citigroup CLN issues, and as discussed herein, has been actively pursuing those claims through the Conseco Action for two and a half years, making the need for an intervenor in the Newby Action on behalf of such claimants, illusory.

This Court has held that only a party which purchased a security may assert a claim against the seller for violations of Section 12(a)(2).¹¹ Here, neither The Regents nor any of the Newby class representatives purchased *any* of the Citigroup CLNs. Hence, The Regents lacks privity with Citigroup concerning the sale of the Citigroup CLNs and, as such, lacks standing to pursue §12(a)(2) claims related to these securities. While The Regents failed to purchase any of the Citigroup CLNs, as admitted by The Regents' Proposed Notice, Conseco is the only party before the Court to have purchased three of the six issues of Citigroup CLNs (Yosemite I Citigroup CLNs, CLN I, and CLN II). As a consequence of Conseco's purchases, Conseco is the only party before this Court to fulfill the standing requirement necessary to pursue Section 12(a)(2) claims on behalf of purchasers of these three issues of Citigroup CLNs. In light of such standing, Conseco is actively protecting the interest of these Citigroup CLN purchasers in the Conseco Action, in which it is pursuing Section 12(a)(2) claims. Accordingly, the ultimatum proposed by The Regents, that unless a purchaser of Citigroup CLNs steps forward, its Section 12(a)(2) claims will be dismissed, is inaccurate. Because The Regents' Proposed Notice fails to inform purchasers of Citigroup CLNs that Conseco has standing to pursue and is pursuing Section 12(a)(2) claims on behalf of purchasers of Yosemite I, CLN I and CLN II Citigroup CLNs, The Regents' Proposed Notice is materially misleading. This Court should deny The

¹³ See Order Memorandum And Order Re Imperial County Employees Retirement System's Motion To Intervene, No. 1999, February 25, 2004 ("February 25th Order") at 96.

Regents' Motion For Leave To Give Notice as to Citigroup CLN purchasers and grant Conseco's Cross Motion.

C. The Regents' Proposed Notice Is Materially Misleading Because Such Notice Does Not Inform Purchasers of Citigroup CLNs That Conseco Has Been Prosecuting A Class Action On Behalf Of Purchasers Of All Citigroup CLNs For Nearly Two And A Half Years

The Regents' Proposed Notice is also materially misleading because it fails to inform purchasers of Citigroup CLNs that Conseco has been actively protecting their interests for nearly two and a half years in H-03-CV-860, which later became H-03-CV-2240. As a result of such a material omission, if The Regents' Proposed Notice was disseminated, purchasers of Citigroup CLNs as a whole would be misled into believing that the only manner in which they can protect their interests is by responding to The Regents' Proposed Notice and intervening in the Newby Action.

In all actuality, as discussed herein, the Conseco Action is the only action by which purchasers of Yosemite I Citigroup CLNs have *any* recourse against Citigroup, because it is the *only* action in which all of the federal securities law claims on behalf of such purchasers have been timely filed, as also discussed herein. Additionally, Conseco is the only party before this Court to have actually purchased Citigroup CLNs -- having purchased three of the Citigroup CLNs discussed in The Regents' Proposed Notice. Conseco is already pursuing Section 12(a)(2) claims on behalf of purchasers of three issues of Citigroup CLNs because Conseco is the only party before the Court that satisfies the statutory standing requirement necessary to pursue a Section 12(a)(2) claim.¹¹

¹¹ In fact, IHC Health Plans, Inc. ("HPI") and Deseret Mutual Bank Administrators ("DMBA"), the first two potential intervenors in the Newby Action who both purchased Yosemite I Citigroup CLNs, both decided to forego participation in the Newby Action once they learned that Conseco had long been actively prosecuting timely class claims on behalf of all Citigroup CLN purchasers in H-03-CV-2240. Both HPI and DMBA have withdrawn as intervenors in the Newby Action and elected to pursue their claims solely as members of the Citigroup CLN purchasers class alleged in the Conseco Action. See, e.g., Affidavit of Jacque Millard, representative of HPI ("HPI Aff."), dated October 16, 2003, at ¶ 11 (explaining why HPI chose to withdraw from the Newby Action).

In failing to inform purchasers of Citigroup CLNs that Consecro is actively protecting their interests in the Consecro Action, The Regents' Proposed Notice paints a very misleading and incomplete picture and does not serve to "protect" the interests of Citigroup CLN purchasers. Accordingly, this Court should deny The Regents' Motion For Leave To Give Notice as to Citigroup CLN purchasers and grant Consecro's Cross Motion.

III. THE ISSUANCE OF THE REGENTS' PROPOSED NOTICE FALLS OUTSIDE THE SCOPE OF FRCP 23(d)(2) BECAUSE SUCH NOTICE WILL NOT PROTECT CITIGROUP CLN PURCHASERS

Rule 23(d)(2) permits a court, in its discretion, to grant leave to give notice "for the protection of members of the class or otherwise for the fair conduct of the action..." Fed. R. Civ. Proc. 23(d)(2) (emphasis added). Here, the issuance of The Regents' Proposed Notice would clearly not "protect" the interests of purchasers of Citigroup CLNs, as such notice is utterly misleading. The Regents' Proposed Notice fails to notify purchasers of Citigroup CLNs that their interests are already being protected in the Consecro Action, creating the false impression that such purchasers must act only through the Newby Action. Furthermore, The Regents' Proposed Notice fails to inform purchasers of Citigroup CLNs that Consecro has standing to assert Section 12(a)(2) claims on behalf of purchasers of three of the six issues of Citigroup CLNs. Most significantly, The Regents' Proposed Notice misleads purchasers of \$ 750 million of Yosemite I Citigroup CLNs into believing that the all of the federal securities law claims, asserted on their behalf, in the Newby Action, are viable, when in fact they are time-barred. Rule 23(d) only permits a court to act so as to "protect" members of a class. The issuance of The Regents' Proposed Notice would not protect purchasers of Citigroup CLNs, but will only harm them. Accordingly the Court should deny The Regents' Motion To Give Notice as to purchasers of Citigroup CLNs.

III. THE COURT SHOULD GRANT CONSECO'S CROSS MOTION FOR LEAVE TO GIVE NOTICE TO PURCHASERS OF YOSEMITE II, STERLING AND EURO CITIGROUP CLNs BECAUSE SUCH PURCHASERS WOULD BENEFIT FROM CONSECO'S PROPOSED NOTICE

Conseco's Proposed Notice, annexed hereto as Exhibit A, informs purchasers of Yosemite II CLNs, Sterling CLNs, and Euro CLNs of the Conseco Action, and directs them to contact Conseco's counsel with questions or to express interest in participating as a class representative. Because Rule 23(d)(2) permits notice for the purpose of "protecting" absent class members, and because Conseco's Proposed Notice would benefit purchasers of Yosemite II CLNs, Sterling CLNs, and Euro CLNs by advising them that the Court has indicated its intention to dismiss the Section 12(a)(2) claims asserted on behalf of purchasers of Yosemite II, Sterling, and Euro Citigroup CLNs unless purchasers of these notes issues step forward as class representatives in order to prosecute these Section 12(a)(2) claims. Accordingly, this Court should grant Conseco's Cross Motion.¹¹¹

CONCLUSION

For the foregoing reasons, Conseco respectfully requests that this Court deny The Regents' Motion For Leave To Give Notice and grant Conseco's Cross Motion.

¹¹¹ Unlike The Regents, Conseco is not requesting that any settlement funds from the Anderson Worldwide Expense Funds be used to provide Conseco's Proposed Notice. See Motion For Leave To Give Notice at 2. .

Dated: May 27, 2004

Respectfully submitted by the Attorneys
For Conseco Annuity Assurance Company,

A handwritten signature in black ink, appearing to read "Brant C. Martin", written over a horizontal line.

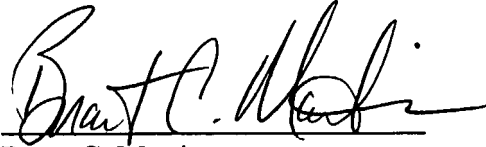
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2004, I caused a true and correct copy of the foregoing instrument to be served on all counsel of record by posting in PDF format to www.esl3624.com.

A handwritten signature in black ink, appearing to read "Brant C. Martin", written over a horizontal line.

Brant C. Martin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES)
LITIGATION)

MDL Docket No. 1446

This Document Relates To:)

Civil Action No. H-01-3624
(Consolidated)

MARK NEWBY, *et al.*, Individually and On)
Behalf of All Others Similarly Situated,)

Plaintiffs,)

vs.)

ENRON CORP., *et al.*,)

Defendants.)

CONSECO ANNUITY ASSURANCE)
COMPANY, Individually and on Behalf)
of All Others Similarly Situated,)

H-03-CV-2240

Plaintiff,)

v.)

CITIGROUP, INC., CITIBANK, N.A.,)
CITICORP, SALOMON SMITH)
BARNEY, SALOMON BROTHERS)
INTERNATIONAL LIMITED, *et al.*,)

Defendants.)

EXHIBIT A

**NOTICE OF POTENTIAL DISMISSAL OF CLAIMS ARISING UNDER
SECTION 12(a)(2) OF THE SECURITIES ACT OF 1933**

**TO: ALL PERSONS OR ENTITIES WHO, BETWEEN NOVEMBER 4, 1999
THROUGH AND INCLUDING DECEMBER 3, 2001, PURCHASED ANY
OF THE FOLLOWING SECURITIES:**

- Enron Sterling Credit Linked Notes Trust 7.250% Notes due 5/24/06

- Enron Euro Credit Linked Notes Trust 6.5% Notes due 5/24/06
- Yosemite Securities Trust II 8.75% Series 2000 Linked Enron Obligations due 2/23/07

FROM ANY OF THE FOLLOWING ENTITIES:

- Citigroup, Inc.;
- Citibank, N.A.;
- Citicorp;
- Salomon Smith Barney, Inc.;
- Schroder Salomon Smith Barney;
- Salomon Brothers International Limited.

This Notice Of Potential Dismissal Of Claims Arising Under Section 12(a)(2) of the Securities Act Of 1933, 15 U.S.C. § 771(a)(2), is given pursuant to Federal Rule of Civil Procedure 23(d)(2) to inform you that:

1. Consecos Annuity Assurance Company ("Conseco"), as proposed lead plaintiff in Conseco Annuity Assurance Company v. Citigroup, Inc., et al. H-03-CV-2240 (the "Conseco Action"), has filed claims arising under Section 12(a)(2) of the Securities Act of 1933 ("Section 12(a)(2)") on behalf of all purchasers of the three above-referenced securities against Citigroup, Inc., Citibank, N.A., Citicorp, Salomon Smith Barney, Inc., Schroder Salomon Smith Barney and Salomon Brothers International Limited.

2. Conseco purchased Credit Linked Notes issued or sold by the above named defendants, however Conseco did not purchase any of the three above-referenced Credit Linked Notes.

3. In light of decisions by the Honorable Melinda Harmon, in the above referenced Newby v. Enron Corp. action, Consecoco will not be able to pursue the §12(a)(2) claims on behalf of the purchasers of the three above-referenced securities, because Consecoco did not purchase those securities.

4. Accordingly, you are hereby notified that unless a person or entity who purchased each of the three above-referenced securities steps forward to serve as a class representative and prosecute the Section 12(a)(2) claims on behalf of purchasers of these three securities, such Section 12(a)(2) claims on behalf of a putative class may be dismissed. The Section 12(a)(2) claim does not require proof of reliance or scienter.

5. If you are interested in serving as a Section 12(a)(2) class representative on behalf of purchasers of any of the three above-referenced securities, or if you have any questions about this notice or about the role of a class representative, please contact counsel for Consecoco, Paul O. Paradis or Edward F. Haber:

Paul O. Paradis
Abbey Gardy, LLP
212 East 39th Street
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Edward F. Haber
Shapiro Haber & Urmey LLP
53 State Street
Boston, MA 02109
(617) 439-3939
ehaber@shulaw.com

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE

Dated: _____, 2004

**BY ORDER OF THE UNITED STATES
DISTRICT COURT, SOUTHERN
DISTRICT OF TEXAS,
HOUSTON DIVISION**

THE HONORABLE MELINDA HARMON